No. 4255

United States
Circuit Court of Appeals
For the Ninth Circuit

IN THE MATTER OF H. J. BRENEMAN, BANKRUPT

H. J. BRENEMAN,
Petitioner,

vs.

M. F. CORRIGAN, as Trustee in Bankruptcy of the Estate of H. J. Breneman, Bankrupt,
Respondent.

Brief for Petitioner

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STATEMENT OF FACTS

On the 21st day of September, 1921, H. J. Breneman, Petitioner herein, filed his voluntary petition and schedules in bankruptcy in the District Court of the United States for the District of Oregon, and was, on said date, adjudged a bankrupt.

In his schedules in bankruptcy he claimed as exempt. "Homestead upon which your Petitioner has lived and occupied as his home since 1914, of which the following is a description:

Commencing at a point 2278 chains west of the

southeast corner of the S. F. Staggs and Minerva J. Staggs Donation Land Claim, Notification No. 1211, Claim No. 55, in Township 4 South of Range 4 West of the Willamette Meridian, and running thence west 7.51 chains; thence north 13 1-3 chains; thence east 7.51 chains; thence south 13 1-3 chains to the place of beginning, containing about 10 acres; also the west half of the South Park subdivision, the same being a subdivision in the above-named and numbered Donation Land Claim of S. F. Staggs and wife, containing 12½ acres of land, as the same appears upon the duly recorded plat of said subdivision now on record in the office of the Recorder of Coneyances in and for Yamhill County, State of Oregon." (Transcript, p. 12.)

M. F. Corrigan, Trustee, Respondent herein, notwithstanding his duty in this regard, failed or refused to make a report to the Court, as required by the Bankruptcy Act, 47a-11, and General Order XVII, of the property set apart to the Bankrupt as exempt.

The Bankrupt was, therefore, forced to file on the 13th day of June, 1923, nearly two years after bankruptcy (Transcript, pp. 13-15) a petition for an order asking the Referee to set aside his homestead claimed by him in his schedules as exempt.

After the filing of this petition by the Bankrupt for the setting aside of his homestead as exempt, Corrigan, the Trustee, filed his answer thereto with the Referee on the 17th day of July, 1923 (Transcript,

pp. 22-26), wherein he denied the right of the Bankrupt to have said property set aside as exempt.

In the meantime, however, on June 19, 1923, in the case of Edith Breneman, Bankrupt, wife of H. J. Breneman, Petitioner herein, Corrigan, Trustee in that case also, filed a petition to sell the property claimed exempt in this case (the Bankrupt wife having an interest therein) free and clear of liens (Transcript, p. 16) and prayed for an order to show cause by the various claimants why said property should not be sold free and clear of lien. (Transcript, pp. 16-18.)

H. J. Breneman, the Bankrupt herein, answered said petition on behalf of himself, which answer was filed with the Referee on the 12th day of July, 1923. (Transcript, pp. 19-22.)

Now upon these petitions and answers a hearing was had on the 20th day of November, 1923. The testimony taken in the matter appears on pages 34 to 45 of the Transcript.

From that testimony it may be seen that the Bankrupt, H. J. Breneman, and his wife were occupying the property in question as a homestead. This is undisputed.

It will also appear from the testimony, as well as from other portions of the record, that a creditor of H. J. Breneman, one D. M. Nayberger, attempted to obtain judgment against the Bankrupt prior to the filing of the petition in bankruptcy and did obtain judgment against him after the filing of said petition

and thereafter, and after the adjudication of said H. J. Breneman, caused execution to issue upon said judgment and the property which the Bankrupt claimed exempt to be levied upon. But this phase of the matter will have no bearing upon the question here since, if the Bankrupt was entitled to his homestead exemption, he was entitled to it, as was stated by the Referee in his decision, *as of the date of the filing of the petition* and any controversy which may exist between the Bankrupt and the Judgment Creditor Nayberger would, in so far as we are here concerned, be a matter of academic interest only.

Upon the petition of the Trustee to sell the property claimed exempt free and clear of liens, and upon the petition of the Bankrupt to have set aside the homestead property as exempt, and upon the testimony taken, the matter was determined by the Referee. Says the Referee in his order denying the exemption and directing the property to be sold free of liens (Transcript, pp. 26-29):

> "This matter now comes on to be heard on the petition of the Trustee to sell real property described in the schedules of the Bankrupt free from liens thereon, and on petition of the Bankrupt to set aside his homestead exemption therein. The rights of the respective parties in this property have been before the Court on petitions for possession, etc., and it has been decided that the Trustee of the two estates has succeeded to the entire estate by operation of law, inasmuch as both husband and wife filed petitions in bankruptcy, so

that unless the Bankrupt, H. J. Breneman, is entitled to the homestead exemption in the property the petition of the Trustee to sell free from liens should be granted.

"I think the standing of H. J. Breneman as a homestead claimant should be determined as of the date he filed his petition setting up his right to a homestead in the property. What has happened since that date by the filing of a petition in bankruptcy by his wife cannot, I think, affect his right as at the time he filed his petition. Hence the sole question for decision now is whether or not he is entitled as one of the spouses in an estate by the entirety to claim an exemption in such estate under the Oregon Statute."

The Referee, then, determined that an exemption cannot be claimed in a homestead occupied by the husband, head of the family, and his wife, where that homestead is owned by said husband and wife as tenants by the entirety.

The matter was taken upon petition for review to the District Court and unfortunately went before the judge upon the record without argument or briefs, and the decision of the Referee was affirmed. However, the question involved is entirely one of law and the matter has been brought to this Court, Petition for Review, for decision.

QUESTION INVOLVED

The sole question for decision, therefore, is the question of law: *Can a husband occupying a homestead with his wife and family claim the homestead exemption allowed by law in said property where said homestead is held under tenancy by the entireties?*

ERROR ALLEGED

The error alleged to have occurred is merely in the determination of the question set forth above—that is to say, whether or not an exemption can be claimed by the husband, the head of the family, in an estate by the entirety.

ARGUMENT

Estates by the Entirety Defined

An estate by the entirety is an estate held by the husband and wife by virtue of a title acquired by them jointly after marriage.

30 *Corpus Juris,* p. 564, s. 97, and cases cited.

Hayes v. Horton, 46 Or. 597, 600.

Hamilton v. Fowler, 99 Fed. 18 (C. C. A. 6th Cir.)

In *Hayes v. Horton,* 46 Or. 597, 600, Judge Bean, then Justice of the Supreme Court of Oregon and now United States District Judge, defines the estate as follows:

"At common law, husband and wife were re-

garded as one person, and a conveyance to them by name was in effect a conveyance to a single person.

"By such a conveyance two real persons took the whole of the estate between them, and each was seized of the whole, and not by any undivided portion. When the unity was destroyed by death, the survivor took the whole of the estate, because he or she had always been seized of the whole thereof, and the other had no interest which was devisable."

(In the same case it was also held that either party to an estate by the entirety may mortgage his or her interest without changing the status of the property rights of the other party. This latter phase will be adverted to hereafter.)

An estate by the entirety is most nearly assimilated to an estate by joint tenancy, the difference being, however, that the joint tenancy is capable of severance or destruction by act of one of the tenants so as to defeat the right of survivorship of the other, while the tenancy by entirety is not. An estate by the entirety is held *per tout et non per my* and a joint tenancy *per my et per tout.* (30 Corpus Juris, p. 556, s. 98 and cases cited.) In practically all other respects, including that of survivorship, the two estates are alike.

Policy and Construction of Homestead Acts

"Statutes exempting homesteads from forced sale on judicial process should receive such a con-

struction as to carry out the beneficent policy of the Legislature. Black on Interpretation of Laws, p. 311."

Wilson v. Peterson, 68 Or. 525, 529.

Waples on Homestead and Exemption, pp. 29-32.

Watson v. Hurlburt, 87 Or. 297, 304.

In re Hewitt, 244 Fed. 245, 247.

In re Irving, 220 Fed. 969, 972.

In re Crum, 221 Fed. 729.

In re Malloy, 188 Fed. 788, 791 (C. C. A. 8th Cir.)

In re Baker, 182 Fed. 392, 394 (C. C. A. 6th Cir.)

In re Culwell, 165 Fed. 828 (Decision by then District Judge Hunt).

* * * * *

"And the spirit of the Bankruptcy Act in the matter of exemption is one of liberality."

In re Culwell, 165 Fed. 828, 829 (Decision by Judge Hunt, then District Judge).

In re Irving, 220 Fed. 969, 972.

* * * * *

"The statutes, which all require that the property shall be owned by him who claims it as exempt from forced sale, do not declare whether the title shall be absolute or qualified, whether in fee or for life or a term of years, whether a freehold or a leasehold. * * * He who actually *occupies*

the premises, with his family, and makes it his and their home, under a legal right of possession, can find no successful competitor for the homestead privilege * * *"

Waples on Homestead and Exemption, pp. 108-109.

Continuing, Waples says (p. 109):

"The law governing homestead ownership under the prevailing system is stated very clearly, and with a near approach to perfect accuracy, in the following excerpt from a judicial opinion:

"'It was not contemplated, nor intended, by the term "owned," as employed in the Constitution, that absolute ownership, or an estate in fee, should be essential to the valid exemption of real property from the payment of debts. There is no limitation to any particular estate, either as to duration, quantity or extent. It is the land on which the dwelling place of the family is located, used and occupied as a home, which the Constitution and Statutes protect, however inferior may be the title, or limited the estate or interest; not because there is an estate or interest in the land, but because it is the homestead, the dwelling place and its appurtenances. Protection of the estate or interest, of whatever dignity or inferiority, is incidental to the preservation of the homestead. The Statute, adopting this construction of the Constitution, expressly declares: "Such homestead exemption shall be operative to the extent of the owner's interest therein, whether it be a fee or a less estate." An absolute or qualified ownership—a fee simple of equitable estate, or for life, or for

years—meets the requirements of the Constitution and Statutes, and effectuates their policy and purposes. **Whatever right or claim the debtor may have, which may be subjected to the payment of debts, or is capable of alienation, falls within their operation, and the homestead exemption may be successfully claimed,** except as against the true owner, or a superior title. **The uses to which the land is devoted, and not the quality and quantity of the estate, impress the characteristics of a homestead.'** "

(The decision quoted is that of *Tyler v. Jewett,* 82 Ala. 93, 98.)

* * * * *

The fact that occupancy coupled with some right to the property is the criterion whereby to determine the propriety of the claim to the exemption of the homestead and not the character of the title under which it is held, is borne out particularly in Oregon by the language of our Statute, which is, of course, the only one with which we are concerned. Says the Oregon Statute, s. 221, Oregon Laws:

"*Homesteads Exempt Must Be Actual Abode.* A homestead shall be exempt from sale on execution from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value of three thousand dollars ($3,000), except as otherwise provided by law. The homestead must be the actual abode of and occupied by the owner, his or her spouse, parent or child, and such exemption shall not be impaired by temporary removal or absence with the inten-

tion to reoccupy the same as a homestead, nor by the sale thereof, but shall extend to the proceeds derived from such sale to an amount not exceeding three thousand dollars ($3,000), while held, with the intention to procure another homestead therewith, for a period not exceeding one year."

Now a careful scrutiny of the language of the Statute will show that the homestead claimed exempt may be occupied by (1) the owner, (2) or his or her spouse, (3) or parent, (4) or child. That is to say, the homestead may be claimed exempt from the debts of the owner by reason of its *occupancy* by any one or more of the four specified by the Statute—the occupant himself, or his wife, or his parent, or his child. It is, therefore, occupancy which is stressed in the Oregon Statute and not the character of the ownership. Of this phase more will be said hereafter.

Homestead Exemptions in Property Held Under Co-Tenancy, Joint-Tenacy and Tenancy by the Entirety

Waples in his work on Homestead Exemptions has written very interestingly on this subject. (See Waples on Homestead and Exemption, pp. 131-143 and also p. 120 and p. 121.) In his discussion Waples comes to the conclusion that the decisions of the courts which hold that homestead exemptions cannot be claimed in property owned under joint tenancy or co-tenancy are based upon proper reasoning especially if the claim is made upon the property as an entirety and not upon

the interest of the tenant in the same and that, therefore, courts which hold otherwise are confused in their reasoning. Says Mr. Waples, p. 131:

> "A residence owned and possessed jointly with others, or in common with others, cannot be wholly set apart by one. It cannot partially be set apart by one, for that would not be a dedication of the dwelling but only of an undivided interest in it, which the law does not recognize, since that interest alone cannot be the home of his family. Nor could it be set apart by all the joint-tenants, or tenants in common as the case may be; for the law offers homestead protection to separate families and not to a community of them. * * * The impracticability of it will appear when we reflect that the liabilities of each may be different from those of the other. The interest of one might become liable to forced sale while that of the other might not. The sale of such interest would render the home no longer protectable. So, one might abandon his homestead right: what then would become of the other's right? It would not save the dwelling-house for his family."

However, Mr. Waples in this discussion particularly makes this reservation. Says he, on p. 131:

> "Husband and wife, indeed, might be such tenants and yet become homestead beneficiaries, since their home is one and their interests are one."

And again, on p. 121:

> "There seems to be no obstacle to the holding

of a homestead in joint tenancy when the husband and wife are the only joint tenants."

And again, p. 140:

"It has been mentioned that when there are but two joint-tenants, and they are husband and wife, the property held by them as such may be made their homestead and occupied by them as such, without any of the absurd results which have been suggested."

And further, p. 142:

"An estate vested in a husband and wife is held as an entirety, and not by moieties, and the title therefore is not an ordinary joint-tenancy."

Now the direct question as to whether or not the homestead exemption could be claimed by one of two owning an estate by the entirety has been passed upon by the Court in the case of *Jackson, Orr & Co. v. Shelton,* 88 Tenn. 82. In that case G. W Shelton and his wife, Roena Shelton, were joint owners as tenants by entirety of a residence in Camden. The homestead was claimed as exempt. Says the Court (pp. 88-89):

"Why not include the head of a family who owns land as tenant by entirety with his wife in the scope of a law whose purpose is so humane and commendable? To the extent of his interest he can use the land for the shelter, support and benefit of his family in the same manner as could another man owning the absolute fee. He stands in the same or greater need of the law's favor. Is he

any the less deserving of protection because he does not own the whole estate? Or is the officer of the law to take what he has because he has not more? Manifestly not. The protection of such an interest is clearly within the spirit and the letter of the Statute. We can conceive no satisfactory reason why the Legislature should not have intended to embrace in this wholesome provision *all present interests in land* naturally embraced in the language used in the Act."

And at pp. 90-91:

"We cannot believe, in the absence of an express declaration to that effect, in the face of the law itself, that the framers of our Constitution, and the members of the General Assembly, intended to extend the benefits of the homestead exemption to citizens owning real estate in severalty, and not to those owning it jointly with their wives as tenants by the entirety.

"A law making such a distinction would, in our judgment, be both impolitic and unjust. It would be an unjustificable discrimination in favor of some persons and against others alike deserving of the law's favor and protection. Such is not our law, which, as we understand it, is distinctly *impartial,* extending the right of the exemption to 'each head of a family owning real estate,' whether in fee, for life, for years, in severalty, in joint tenancy, etc."

In this connection attention is called to the fact that one of the cases cited by the Referee, that of *Avans v. Everett,* 3 Lea (Tenn.) 76, is expressly over-

ruled by this Tennessee case of *Jackson, Orr & Co. v. Shelton.* Says the Court, on page 91 of this opinion:

> "As to the case of *Avans v. Everett,* 3 Lea 76, wherein it was decided that the right of homestead did not exist in land held by tenants in common, we content ourselves with the observation that its reasoning *(which we do not feel called upon to approve)* has no application to this case, because here the debtor's interest is practically equivalent to an estate for life, at the least, in severalty, and is not an undivided interest merely, as in that case; that if sound upon its own facts, which we do not decide, the doctrine of that case should not be extended."

In *Corinth v. Emery,* 63 Vt. 505, 509, the Court says:

> "Such an estate (by the entirety) is the real estate of a married woman although her husband is joined with her in the title. It is the real estate of each. If the claim of the plaintiff is upheld, then the interest of the husband in his wife's right, in her real estate, is taken upon the sole debt of the husband. This would annul the Statute. The estate of the wife and her husband's interest therein in her right in the property in question is protected from the husband's sole creditors by the spirit and letter of the Statute."

And so in the case of *Cole v. Cole,* 126 Mich. 569, 571, it is said:

> "It is settled in this state that parties may have a homestead interest in land held by the entirety. *Lozo v. Southerland,* 58 Mich. 168."

To the same effect is *Bennett v. Child,* 19 Wis. 362, 88 Am. Dec. 692.

The same reasoning that compelled the Court to hold that a homestead exemption was properly claimed by one who was a tenant by the entirety compelled the United States District Court for the District of Nevada to a like ruling in the case of *In re Swearinger,* Federal Case No. 13683, 17 N. B. R. 138. Says the Court by Hillyer, Judge:

> "The law does not attempt to guarantee a perfect title to the premises, or necessarily, an exclusive ownership and possession, but it protects whatever right, title and interest the debtor has from forced sale. The object of the law is to protect from forced sale the homestead in which lives the family of a man who is so poor as to need such protection. Now, a homestead owned and occupied in conjunction with a co-tenant is as much a shelter to the family of a poor man as if the land were owned in severalty. * * *
>
> "My own conclusion is that, under the Constitution and Laws of Nevada, the actual homestead of every head of a family, of less value than five thousand dollars, is protected from forced sale; that there is nothing in such Constitution or Laws restricting the benefit of exemption to those who have any particular kind of title; that any interest the claimant may have in the dwelling-house and land constituting his actual home, which would otherwise be subject to forced sale, is by the laws exempted from such sale; and, consequently, that under such circumstances the interest of a tenant in common is exempt."

It is realized that in this case the Court is discussing tenancies in common, but whatever is said in regard to tenancies in common would be applicable to tenancies in entirety insofar as the reasoning here is concerned. It is also interesting to note that Judge Hillyer criticises the decision in the case of *Wolf v. Fleischacker,* 5 Cal. 244, cited by the Referee in his opinion. *Wolf v. Fleischacker* is a California case and the Court intimates that in all probabilities that case has been overruled by a later California case mentioned. However, the rule in California in this regard is deemed to be peculiar to that state.

Anent the Ruling of the Referee That Homestead Exemption Could Not Be Claimed by a Tenant by the Entirety

The Referee in coming to the conclusion that a homestead exemption could not be claimed in property held by the entirety, reaches that conclusion by the same reasoning criticised by Judge Hillyer in *In re Swearinger (ante),* and criticised by the Court in the case of *Jackson, Orr & Co. v. Shelton* and by Waples in his work on Homestead and Exemption. Says the Referee:

> "The Statute is explicit that *it must be the owner who may make the claim* to the homestead and Breneman, it seems to me, was not the owner either of the whole or of any part of the property. It belonged to the community, the union or the entirety. He was no more entitled to claim a home-

stead than was his wife or the entirety, or union. There was no part of this estate which might be set off to him because there was no part which could be designated as belonging to him." (Transcript, pp. 27-28.)

And the Referee quotes as sustaining his view the cases of *Sharp v. Baker,* 99 N. E. 44, which is a denial of a petition to review the opinion of the Court in 96 N. E. 627, and *Henderson v. Hoy,* 26 La. 156. And he cites the cases of *Wolf v. Fleischacker,* 5 Cal. 244 (already discussed), *Avans v. Everett,* 3 Lea 76 (also discussed, and which has been shown to have been specifically overruled), and *United States Oil & Land Co. v. Bell,* 153 Cal. 781 (which is a decision regarding tenancies in common and joint tenancies and does not relate to a situation where parties occupying the premises are husband and wife).

Now the Referee says that the Statute of Oregon is explicit in asserting that it must be the owner who makes the claim to the homestead. In this we call the attention of the Court to the fact that under Section 224 of the Oregon Laws:

"Whenever a levy shall be made upon a homestead, the *owner thereof, his or her spouse, parent or child, agent or attorney,* may notify the officer making such levy, at any time before the sale thereof, that he claims a homestead in such lands, giving a description of the quantity of land claimed as a homestead. * * *"

So it may be seen that the Referee is not correct in his statement in this regard.

* * * * *

Now the statement of the Referee in his opinion that the tenant by the entirety is not the owner of the whole or any part of the property is sophistry, unintentional undoubtedly, but sophistry nevertheless, for it would be just as correct to say that he is the owner of all and every part of the property. He holds the property *per tout et non per my*. The fact is that he had an interest in the property and ownership in the same of some kind, and this ownership when coupled with *occupancy* gives rise to the right of exemption. This being true, the requirements of the Oregon Statute were fully complied with and the perquisites of all homestead exemption theories were fully satisfied.

* * * * *

Moreover, the cases relied on and quoted at length by the Referee are really, when closely studied, not apposite. For example, in the first case, that of *Sharp v. Baker* (Ind.) 99 N. E. 44, the language of which seems to be appropriate, when considered in connection with the Indiana law will be seen not to apply, for Indiana has no *homestead* exemption statute. (See Waples on Homestead and Exemption, Appendix, pp. 959-960.) The Indiana law exempts from execution property, real or personal, of a householder to the extent of $600.00. In the case referred to it is merely held that a general exemption statute will not protect property from execution on a joint

judgment when that property is held by the entirety. A *homestead* exemption law is not involved in the case at all. Be that as it may, the effect of *Sharp v. Baker* when applied to the case at bar is eliminated for in the case of *Kohring v. Bowman,* Appellate Court of Indiana, 137 N. E. 767,769, decided by the same Court as that of *Sharp v. Baker,* many years later, it was held that *"property, real or personal, when held by husband and wife by entireties, is not liable to be sold on execution to satisfy a judgment against the husband alone."* In the case of *Henderson v. Hoy,* 26 La. 156, quoted by the Referee, it is apparent from the language thereof that the party claiming exemption in the property was one of six co-tenants and he had nothing but an incorporeal interest, a mere share in the land, and therefore could not claim the same exempt as a homestead. This is far from the situation in the case at hand.

We confidently assert, therefore, that the conclusion of the Referee has been reached upon authorities which do not have the force or effect which he claimed for them and which he undoubtedly was led to assume they had.

The Logic and the Justice of the Situation

Before concluding this brief, let us inquire whether logic or justice requires such a harsh ruling as would result from an affirmation of the Referee's order.

A man and his wife own a homestead by the entirety.

If either one of them, being the head of the family, held title to the property singly, there would be no question but that the homestead could be claimed in the same. The purpose of the claim would be the same whether the ownership was single or by the entirety — that is, to save for themselves a home. That is the purpose and policy of the homestead law of Oregon. Is this policy to be defeated because title is taken in the name of husband and wife rather than in the name of the husband alone or the wife alone? The Homestead Exemption Statute, as has heretofore been seen, is to be liberally construed for the purpose of carrying out the policy of the law. Now the Statute says that "a homestead shall be exempt * * * from the debts of the owner * * *" and that "the homestead must be the actual abode of and occupied by the *owner, his or her spouse, parent or child.*" Certainly the homestead in the case at bar was the actual abode and occupied by the owner, whether that owner was the husband, or the wife, or both of them. The Statute provides that such a homestead shall be exempt and it states further that it shall be *exempt from the debts of the owner,* but it does not require ownership of any kind in the property to permit a claim for exemption. Of course, it must of necessity be the debt of some one who claims some interest in it that is exempted in order to make the claim pertinent, but the language of the Statute does not require *ownership in the property* claimed exempt, but merely occupancy therof "by the owner, his or her spouse, parent, or child."

We maintain, then, that a construction which would require a certain quality of ownership to be held in property to justify a claim of exemption would be a forced construction and would certainly emasculate the policy in mind in the enactment of the Statute.

* * * * *

It has been held in Oregon by Judge Robert S. Bean, then sitting upon the Supreme Bench of that State, in the case of *Hayes v. Horton,* 46 Or. 597, 600, that a tenant by the entirety might mortgage or convey his interest in the property. The syllabus of the case in this regard is as follows: "Either party to an estate by an entirety may mortgage his or her interest without changing the status of the property right of the owner thereto." This being true, certainly a tenant by the entirety *owns* some interest in the property and, owning some interest in the property, he would have a right to claim the property exempt, providing it is his abode or that of his family.

We maintain, therefore, that the Referee's order, which was formally approved by the District Court, should be reversed and the Bankrupt should be permitted to claim exempt the property in question, or so much thereof as is allowed by the Oregon Statute.

* * * * *

(The record inserted at the request of the Trustee in this case has been ignored in this brief. There is nothing in that record which would mitigate against

any argument or statement made herein. In fact, it would tend to strengthen rather than weaken our position in the matter. But it is not proper, in our opinion, for reasons mentioned in the motion on file with this Court, that the same should be included in the Transcript. We have asked to have it stricken and that cost be taxed against the Trustee and Respondent, and we have, therefore, ignored the same.)

Respectfully submitted,

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Attorneys for Petitioner.